

## **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JOSHUA AHAMED,

Plaintiff,

– against –

563 MANHATTAN INC d/b/a COTTER  
BARBER, 321 GRAHAM INC. d/b/a  
COTTER BARBER, and BRIAN BURNAM,

Defendants.

ECF CASE

1:19-cv-06388 (ERK) (CLP)

**DEFENDANTS' RESPONSES AND  
OBJECTIONS TO PLAINTIFF'S  
FIRST SET OF REQUESTS TO  
ADMIT**

Defendants 563 Manhattan Inc. d/b/a Cotter Barber, 321 Graham Inc. d/b/a Cotter Barber, and Brian Burnam (“Defendants”), by and through their attorney, Michael L. Ferch, Esq., hereby answer and/or object to Plaintiff’s First Set of Requests to Admit, under oath, as follows:

**GENERAL OBJECTIONS**

Defendants object to Plaintiff’s Requests to Admit to the extent they seek information which is irrelevant to the claims asserted in this lawsuit, or otherwise not likely to lead to discovery of evidence admissible at trial.

Defendants further object to Plaintiff’s Interrogatories to the extent they seek information beyond the scope permitted by the Federal Rules of Civil Procedure and the Local Civil Rules of the U.S. District Court, Eastern District of New York (hereinafter, collectively, the “Rules”), or are otherwise improper, untimely or premature under the aforementioned Rules.

**RESPONSES TO PLAINTIFF'S  
REQUESTS FOR ADMISSION**

1. Admit that on July 3, 2019, Defendant Brian Burnam had the ability to access the inbox of the e-mail address, “brian@cotter.nyc”.

Response: Admit.

2. Admit that on July 3, 2019, Defendant Brian Burnam accessed the inbox of the e-mail address, "brian@cotter.nyc".

Response: Admit.

3. Admit that on July 3, 2019, Defendant Brian Burnam received the following notice ("Notice"), in relevant part, in the inbox of "brian@cotter.nyc":

Respondents are on notice to preserve and not destroy all documents or other evidence that pertain to these claims, including, but not limited to, all video surveillance of the premises of 563 Manhattan Ave and 321 Graham Ave between May 2019 and July 3, 2019, copies of all versions of the employee handbook, and payroll records of Mr. Ahamed. Failure to preserve and not destroy the foregoing may result in serious sanctions against Respondents, including an adverse inference that the evidence not preserved or destroyed, if reviewed, would demonstrate the truth of the claims against Respondents. See e.g. Sarko v. Associated Supermarket, 2017 NY Slip Op 07975 [N.Y. App. Div. 2017].

Response: Admit that this notice was received, but no inference that Defendants intentionally acted or failed to act in response to this Notice. Defendants do not admit that "video surveillance evidence" was neither preserved nor destroyed by Defendants.

Defendant Burnam believed the 563 Manhattan Avenue shop's security cameras preserved recordings for an indefinite or lengthy period of time. It was only after this lawsuit was commenced that it was determined that video recordings are only saved for 30 days, then erased.

4. Admit that on July 3, 2019, Defendant Brian Burnam read the foregoing Notice.

Response: Because Plaintiff's attorney, Zachary J. Liska, Esq., was a "regular customer" for 2-3 years at my 563 Manhattan Avenue shop (stopping in approximately 2 times per day and spending hours "hanging out" at the shop drinking coffee and conversing with the shop's staff and barbers), when I received the July 3 email/notice I believed it was a prank. Since Plaintiff and I worked closely together without incident, socialized after business hours -- and Plaintiff, Attorney Liszka and I -- maintained a good and healthy repertoire, I believed this Notice to be a prank or joke that Attorney Liszka and Plaintiff were trying to pull on me.

5. Admit that Defendant Brian Burnam did not act to preserve or destroy any video surveillance of the premises of 563 Manhattan Avenue and/or 321 Graham Avenue in Brooklyn, New York, following receipt of the foregoing Notice.

Response: See Responses 3 and 4 above.

Dated: Brooklyn, New York  
July 16, 2020

Sincerely yours, etc.,

BY:

  
Michael L. Ferch, Esq. [MF-6211]  
Law Office of Michael L. Ferch  
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VERIFICATION

STATE OF NEW YORK )  
                        )  
COUNTY OF KINGS      )

Brian Burnam, being duly sworn, deposes and  
says:

I am OWNER OPERATOR of defendants 563 MANHATTAN INC  
d/b/a COTTER BARBER, 321 GRAHAM INC. d/b/a COTTER BARBER, and I  
am also a defendant. I have read the foregoing ANSWERS AND  
OBJECTIONS TO PLAINTIFF'S FIRST SET OF REQUESTS TO ADMIT and  
know the contents thereof; the same is true to the best of my  
own knowledge, except as to the matters therein stated to be  
alleged on information and belief, and as to those matters I  
believe it to be true.

Brian Burnam  
Signature:

BRIAN BURNAM.  
Name:

OWNER OPERATOR  
Title:

Sworn to before me this

16<sup>th</sup>  
day of July, 2020.

  
\_\_\_\_\_  
Notary Public

**MICHAEL L. FERCH**  
**Notary Public, State Of New York**  
**No. 02FE6039584**  
**Qualified In Kings County**  
**Commission Expires April 3, 2022**